

MINUTES OF MEETING
RUSH RIVER WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
SEPTEMBER 7, 2011

The Rush River Water Resource District met on September 7, 2011, at 9:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Raymond Wolfer, Chairman; William A. Hejl, Manager; Keith Monson, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Diane Pochardt, Administrative Assistant; Nina Stone, Accountant; Sean M. Fredricks, Attorney for the Board; Chad Engels, Engineer for the Board; Brady Woodard, Moore Engineering, Inc. and those whose names appear on the attached roster.

Rodney Nelson/George A. Loegering/ John Grommesh matter in the NW 1/4 of Section 29 in Harmony Township

Rodney Nelson asked about the sizing of the township crossing in the NW 1/4 of Section 29 in Harmony Township. The Board informed him they do not have jurisdiction over this and suggested he work with the Township or hire an engineer to size the crossing.

Mr. Nelson stated John Grommesh did not completely remove the berm that obstructs the artificial drain in the NW 1/4 of Section 29 in Harmony Township. Sean Fredricks reviewed the Order dated September 28, 2009. Chairman Wolfer looked at the site and in his opinion, it no longer restricts the flow of water. Mr. Grommesh said it is to grade with the field ditch. Mr. Nelson said there is 1' of silt in the coulee. The Water Resource District does not have jurisdiction over silting issues. Chairman Wolfer said it would be difficult to determine the original grade. George Loegering said the coulee going south should be opened to the natural slope and the opening through the obstruction should be widened.

Mr. Fredricks asked if the obstruction materially affects the free flow of water. He added that the obstruction has to be manmade in order for the Water Resource District to have jurisdiction and silt in the channel is not considered manmade. Chad Engels said the obstruction does materially affect the free flow of water.

Various options were discussed. Mr. Grommesh said he would like to put the east ditch to grade to send the water east, then south. Mr. Loegering said there is a restrictive culvert and the ditch to the south needs to be cleaned. Mr. Grommesh indicated he

would clean the ditch. Mr. Loegering said the opening is fine during low water, but restrictive during high water. He said the obstruction held water higher on their property longer this year. He asked again for a larger opening through the obstruction.

Mr. Engels will work with the property owners to assure that the restriction no longer materially affects the free flow of water.

Amenia Township Drainage Improvement District No. 69

Mr. Engels informed the Board that the State Water Commission will consider cost share for the Amenias Township Drainage Improvement District No. 69 Project at its September 21, 2011, meeting.

Application to Drain No. 3824 – Rush River Water Resource District – Amenias Township Drainage Improvement District No. 69 Project

The Board reviewed information from the State Engineer regarding *Application to Drain No. 3824*, previously submitted by the Rush River Water Resource District for the Amenias Township Drainage Improvement District No. 69 Project. The State Engineer concluded the project is not “of either statewide or interdistrict significance.”

The Board reviewed and adopted Moore Engineering’s proposed responses to the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board is acquiring the requisite right of way to accommodate the project, and the right of way acquisition will eliminate adverse impacts to private landowners.

It was moved by Manager Hejl and seconded by Manager Monson, to approve *Application to Drain No. 3824* for Rush River Water Resource District, subject to any conditions attached by the State Engineer. Upon roll call vote, the motion carried unanimously.

Ditch block ordered in the NE 1/4 of Section 8 in Amenias Township

Roland Priewe informed the Board a ditch block is not in place in the north-south road ditch in the NE 1/4 of Section 8 in Amenias Township. The township agreed to withdraw their Complaint against Mr. Nelson while the Water Resource District pursued development of a legal assessment drain, provided Mr. Nelson installed the ditch block. Mr. Priewe wants the ditch block installed by October 15, 2011, or they will be forced to act on the Complaint. He added that the ditch block was not put in last fall. Mr. Nelson said if someone else wants to put in the ditch block, they can do so. Manager Hejl reiterated that the township and property owners were willing to put the Complaint on hold, pending the legal drain process and that the ditch block be installed. He added that if the drainage is ordered closed, the Water Resource District can close it and charge Mr. Nelson the cost to do so. Moore Engineering, Inc. previously set stakes for the ditch block. Mr. Priewe said the township withdrew their Complaint without

prejudice, provided the ditch block was put in place and that all ditching was supposed to stop. Manager Hejl acknowledged that the ditch block may wash out after a 3-4" rainfall. Mr. Priewe said if it washes out Mr. Nelson does not have to worry about it. The Water Resource District directed Moore Engineering Inc. to stake the ditch and Mr. Priewe indicated the township would refrain from refiling the Complaint if Mr. Nelson constructs the ditch block in the NE 1/4 of Section 8 in Amenia Township by October 15, 2011.

Application to Install a Subsurface Drain #201128 for James Ueland, Ralph Peterson, and Perry Rust in the N 1/2 of Section 13 in Harmony Township

The Board reviewed *Application to Install a Subsurface Drain No. 201128* dated July 12, 2011, for James Ueland, Ralph Peterson, and Perry Rust. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicants seek to install a drain tile system in the N 1/2 of Section 13 in Harmony Township, Cass County, North Dakota. The project will include a gravity outlet on the east line of the NE 1/4 in Section 13. The outlet will discharge through a buried pipe along the E 1/2 SE 1/4 in Section 13 until the pipe discharges into the south branch of the Rush River.

Mr. Engels reviewed the application and submitted his recommendation to the Board that, because the project will include a buried pipe on property not owned by Applicants, the Board should require Applicants to obtain an easement from the owner of the E 1/2 SE 1/4 in Section 13 for purposes of locating and maintaining a buried pipe. Further, Mr. Engels recommended that the Board require Applicants to install and maintain erosion protection in the south branch of the Rush River to avoid erosion. Because the project will ultimately discharge into the south branch of the Rush River, and will not flow over private property before reaching the south branch of the Rush River, no *Thirty-Day Notice* was required under N.D. Cent. Code Section 61-32-03.1.

According to records on file with the Cass County Recorder's Office, Applicants own the N 1/2 in Section 13. Further, according to records on file with the Cass County Recorder's office, George and Mary Ann Waxler own the E 1/2 SE 1/4 in Section 13, where Applicants seek to install the buried pipe to convey the discharge to the south branch of the Rush River. Mr. Waxler previously provided written permission to install buried pipe on his property; however, for the benefit and protection of both Mr. Waxler and the Applicants (to avoid a situation where a written consent is withdrawn), the Rush River Board will require Applicants to obtain a written easement for purposes of recording with the Cass County Recorder's office.

It was moved by Manager Monson and seconded by Manager Hejl to approve *Application to Install a Subsurface Drain No. 201128* dated July 12, 2011, for James Ueland, Ralph Peterson, and Perry Rust in the N 1/2 of Section 13 in Harmony Township, subject to the following conditions:

- 1) That Applicants obtain and record (with the Cass County Recorder's office) an easement (and not just a written consent), to permit Applicants to install a buried pipeline in the E 1/2 SE 1/4 in Section 13 in Harmony Township, Cass County, North Dakota. None of the tile system, including the outlet, will be located in Cass County 11 right of way;
- 2) That Applicants obtain easements from the owner of any land, besides land owned by Applicants, on which Applicants will construct the tile system;
- 3) That Applicants provide and maintain adequate erosion protection at any and all outlets into the south branch of the Rush River;
- 4) That Applicants notify the Rush River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets; and
- 5) That Applicants obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

Ring Dike Cooperation Agreements

It was moved by Manager Hejl and seconded by Manager Monson to approve the Ring Dike Cooperation Agreement for the property located in the NE 1/4 of Section 2 in Raymond Township for Clarence, Doris, James and Nancy Krogh, contingent on review on the plans by the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Hejl and seconded by Manager Monson to approve the Ring Dike Cooperation Agreement for the property located in the SW 1/4 of Section 6 in Raymond Township for James Ueland. Upon roll call vote, the motion carried unanimously.

Policy on culvert installations and berm elevations

The Board discussed the need for a written policy on culvert installations and berm elevations. Chairman Wolfer requested the Board reconsider the action taken at the August 8, 2011, meeting requiring cost share from Kevin Heiden for installation of a culvert on Drain #30 in Section 8 of Harwood Township. He said it is an assessment drain and maintenance funds should be used to pay for the culvert. He believes the

Board should repair washouts even though there is no design berm height and he does not want to cause a hardship for property owners. The Secretary-Treasurer was instructed to return the check to Kevin Heiden.

Cleanout of the lower Rush River

Property owners have expressed an interest in cleaning the lower Rush River. The entire lower branch has a lot of sediment with things completely submerged in silt. Manager Hejl expressed concern about the slope sliding if only a cleanout is done. Manager Hejl suggested Mr. Engels contact contractors for hourly rates and availability for October/November for the project. Manager Monson would like box culverts between Sections 32 and 33 in Harwood Township reanalyzed.

Berlin-Harwood Township Improvement District No. 72 – Joint Powers Agreement with Cass County

It was moved by Manager Monson and seconded by Manager Hejl to approve the *Joint Powers Agreement* with Cass County regarding Berlin-Harwood Township Improvement District No. 72. Upon roll call vote, the motion carried unanimously.

Drain #29 – bridge replacement between Sections 25 and 36 of Wiser Township

It was moved by Manager Monson and seconded by Manager Hejl to work with Cass County on the Drain #29 bridge replacement between Sections 25 and 36 of Wiser Township. Upon roll call vote, the motion carried unanimously.

Drain #29A

The Board will discuss 2011 Spring Flood damages at the next meeting.

It was moved by Manager Hejl and seconded by Manager Monson to pay down the Drain #29A bond issue as able with the funds on hand. Upon roll call vote, the motion carried unanimously.

Application to Install a Subsurface Drain No. 201130 for Floyd Longlet in the N 1/2 of Section 11 in Amenia Township

The Board reviewed *Application to Install a Subsurface Drain No. 201130* dated August 9, 2011, for Floyd Longlet. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicant seeks to install a drain tile system in the N 1/2 of Section 11 in Amenia Township, Cass County, North Dakota. The project, previously installed by Applicant, includes a gravity outlet that will discharge through a buried pipe over the NW 1/4 SE 1/4 in Section 11 before discharging into a natural watercourse. In addition, there is a second outlet that discharges in the NW 1/4 in Section 11 into a natural watercourse, on property owned by Applicant.

Mr. Engels reviewed the application and submitted his recommendation to the Board that, because the project will require buried pipe on property not owned by Applicant, the Board should require Applicant to obtain an easement from the owner of the NW 1/4 SE 1/4 in Section 11. The project includes two outlets, one that discharges directly into a natural watercourse on the NW 1/4 in Section 11, and another that will discharge into a natural watercourse in the NW 1/4 SE 1/4 in Section 11 after discharging through a buried pipe, and so the application did not require a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1, and the Board cannot require Applicant to obtain any flowage easements from downstream landowners.

According to records on file with the Cass County Recorder's Office, Floyd and Louise Longlet own the N 1/2 in Section 11. Further, according to records on file with the Cass County Recorder's office, Galen and Carolyn Erb own the SE 1/4 in Section 11.

It was moved by Manager Hejl and seconded by Manager Monson to approve *Application to Install a Subsurface Drain No. 201130* dated August 9, 2011, for Floyd Longlet in the N 1/2 of Section 11 in Amenia Township, subject to the following conditions:

- 1) That Applicant obtain and record (with the Cass County Recorder's office) an easement (and not just a written consent), to permit Applicant to locate and maintain buried pipe in the NW 1/4 SE 1/4 of Section 11 in Amenia Township, Cass County, North Dakota.
- 2) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 3) That Applicant notify the Rush River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets; and
- 4) That Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

Minutes

It was moved by Manager Hejl and seconded by Manager Monson to approve the minutes of the August 8, 2011, meeting. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Monson and seconded by Manager Hejl to approve payment of Checks #3537 through #3543 and the electronic funds transfer, as presented. Upon roll call vote, the motion carried unanimously. The Chairman declared the motion passed.

Adjournment

There being no further business to be considered by the Board, it was moved by Manager Wolfer and seconded by Manager Monson and unanimously carried to adjourn the meeting.

APPROVED:

Raymond Wolfer
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer